

REMARKS/ARGUMENTS

This is intended to be a complete response to the Official Action mailed September 28, 2004, in which all claims were rejected. Applicant respectfully traverses the rejections of the claims.

Objection to the Drawings

The drawings have been objected to under 37 CFR 1.83(a), on the basis that:

"The tapered shaped sleeve having a banding element as cited in instant independent claims 1 and 16 are not depicted (the sleeves depicted in Figures 14-17 are not tapered), and the embodiment of instant independent claims 1 and 16 are not depicted as further limited by instant dependent claims 8 and 22 respectively (tapered sleeve having a side gusset)."

In response to the objection, new Figures 18-21 have been added. Figures 18 and 19 show a tapered sleeve 10a which is secured about a pot via a securing element, and Figures 20 and 21 show a tapered and side-gusseted sleeve 10b which is secured about a pot. Sleeves 10a and 10b are supported and enabled in the original specification in paragraphs [0028] - [0030] and Figures 7-9. Further, paragraph [0037] states that any of the sleeves described in the specification (including 10a and 10b) can be secured about a pot. Therefore, Applicant respectfully submits that Figs. 18-21 are fully enabled in the specification as originally filed and do not constitute new matter.

The specification has been amended in accordance with the new Figures. In particular, new paragraphs [0020a] - [0020d] and [0039a] and [0039b] have been added. Again, Applicant respectfully submits that newly added paragraphs [0020a] - [0020d] and [0039a] and [0039b] are fully enabled in the specification as originally filed thus do not constitute new matter. Applicant respectfully requests that the amendments to the specification and drawings be entered into the record. Applicant also respectfully requests reconsideration and withdrawal of the objection.

Objection to the Specification

The abstract and paragraph [0001] have been objected to, and have been amended as suggested in the official action, thereby mooting the objection. Applicant respectfully requests withdrawal of the objection.

Rejection Under 35 U.S.C. §102(b)

Claims 1, 5, 6, 8, 10-12, 14-16, 20-22, 24-26, 28 and 29 stand rejected under 35 U.S.C. 102(b) as being anticipated by FR1376047 (1964).

In the rejection it is stated:

"The French reference depicts in Fig. -5 a pot covering comprising: a pot as cited, a banding element as cited and a preformed sleeve having a tapered shape (presumably initially flattened) and closed, non-gusseted lower end; the plant package as depicted in Fig. -5 is readable as dimensioned in the instant independent claims (a direct measurement of the pot rim diameter (1.3125 in.) and

sleeve diameter (1.5625 in.) adjacent the pot rim, yields a 10% diameter differential, as cited in the instant claims)."

Applicant respectfully traverses the basis for the rejection. Examiner's opinion that the cover of Fig. 5 of the French reference is tapered in the flattened condition is merely conjecture on the Examiner's part. The French reference provides no teaching that in the initially flattened condition the cover has a tapered shape. Furthermore, the cover of Fig. 5 of the French reference is apparently designed to be able to accommodate a variety of different pot sizes "to fit all kinds of plants" (see Translation of French reference, p. 2, line 1. Attachment 1).

Regarding the rejection of claims 5 and 20 in particular, all Figures of the French reference show a sleeve portion which is designed to completely enclose the potted plant within the cover. This upper sleeve portion is not a "decorative skirt" as the term is used by a person of ordinary skill in the art. A decorative skirt is well known in the art as a decorative portion of a pot cover which is positioned to provide a decorative effect about the upper rim of the pot and to decorate the lower portion of the floral grouping so that the floral grouping is made more attractive. There is no such decorative effect provided by the covers of the French reference, and thus the covers taught by the French reference do not comprise a decorative skirt portion.

Regarding the rejection of claims 8 and 22, contrary to the Examiner's assertion, there is no evidence that the covers of the French reference have one

or more side gussets when they are provided in the flattened condition, as necessitated by the pending claims.

Given that the French reference does not explicitly teach each and every element of the invention of the claims, such claims cannot be rejected under 35 U.S.C. §102(b) as anticipated by the French reference. In view of the above, Applicant respectfully requests reconsideration and withdrawal of the rejection under §102(b).

Rejection Under 35 U.S.C. §103(a)

Claims 2-4, 9, 17-19 and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over FR137047 (1964) in view of Charbonneau (US Des. 259,333), and claims 7, 13 and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over FR 1376047 (1964) in view of Weder (US 5,581,938).

Applicant respectfully traverses the rejection for the reasons provided above in the response to the rejection under §102(b).

In particular, the French reference provides no teaching that in the initially flattened condition the cover has a tapered shape. The cover of Fig. 5 of the French reference is apparently designed to be able to accommodate a variety of different pot sizes (see Translation of French reference, p. 2, line 1).

Further, there is no motivation to taper the cover of the French reference since doing so would reduce the variety of sizes of pots which could be inserted in the French covers.

In view of the above, Applicant respectfully requests reconsideration and withdrawal of the rejections under §103(a).

Double Patenting

Claims 1-29 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over independent claims 27 and 39 of U.S. Patent No. 6,662,496.

Applicant submits herewith a terminal disclaimer over U.S. Patent No. 6,662,496, thereby mooting the rejection.

Secondary References

The secondary references cited in the Office Action (Celtorius '436, Berry '186, Larson '697, Weder '405, Joergensen DE '281, Thompson '108, Parker '822, and Griffon '925) have been reviewed. None of the references teach the invention as claimed herein.

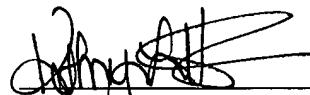
Conclusion

This was meant to be a complete response to the Office Action mailed December 28, 2004.

In view of the above, Applicant respectfully submits the claims are now in a condition for allowance and requests issuance of a Notice of Allowance thereof.

Should the Examiner have any questions regarding this Amendment, or the Remarks contained therein, Applicant's representative would welcome the opportunity to discuss same with the Examiner.

Respectfully submitted,



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Agent for Applicant

Amendments to the Drawings:

The attached sheet of drawings includes new Figs. 18-21.

Attachment: Additional Sheet

Annotated Sheet Showing Addition of Figs. 18-21

